

ADEPT
Legal Commentaries

June 2005

Activity of the Parliament on May 30 - June 3, 2005

9 June 2005

Parliamentarians debated on several draft laws on June 2, in particular, on introduction of amendments to old laws. Also, the Parliament passed a new law which regulates the statute of botanical gardens, in the final reading. It is worth to mention that a consumer protection organization was holding a news conference when the legislature was adopting this law, and claimed that the Botanical Garden in the Chisinau municipality is abusively administrated, while the Environment Ministry leases it to a private company, which raises profits from prohibited activities rather than improves the situation of this scientific institution.

A draft law on pay of indemnities to detainees, which will be used to issue identity documents to detainees, if they do not hold them, raised a special attention.

Also, the examination in the second reading of a law which empowers the Labor Inspection with the right to apply administrative sanctions provoked ardent debates. A new situation was observed in the Parliament on this occasion - the absence of several lawmakers from the Communist majority faction halts the adoption of some organic laws. Thus, the votes of the 51 lawmakers representing the ruling Communist Party of Moldova were not enough to promote this law at the very beginning, and this situation generated ardent talks and mutual accusations between the majority and opposition factions. Also, some opposition deputies obstructed their own faction colleagues and supported drafts promoted by majority.

However, the Parliament debated on several important laws which shall be given a thorough consideration below.

I. Law on Botanical Gardens

Commentary by ADEPT: Under the adopted law, a distinct juridical regime will be in effect for botanical gardens, which will hold a statute of public science and innovation institutions subordinated to the Moldovan Academy of Sciences or local public administration authorities. This statute will exempt them from some state taxes and fees, and will allow them to attract internal and external financing, including from the private sector.

The law says that the botanical gardens are created through delimitation of grounds and/or water areas under a special management regime for conservation, adaptation and regeneration under best artificial conditions of sorts of local, allochthon and exotic plants, which are significant from scientific, economic and esthetic points of view.

Constructions in botanical gardens must be based on a project approved by the Moldovan Academy of Sciences and documents on town planning and territorial arrangement.

Sale and leasing of fields which are part of public botanical gardens are prohibited, while their withdrawal must be based on a decision of the Parliament, a proposal of the Moldovan Academy of Sciences, and an agreement of the central environment authority, only if they lose their value after natural disasters or catastrophes, and if they cannot be restored.

Under the law, botanical gardens are created to ensure the protection, maintenance, reproduction, reasonable use of bio-diversity of vegetal world, ecological, cultural and esthetic education, and recreation of population. The key tasks of scientific activity of botanical gardens comprise among others:

- creation of collections and exhibitions of local and allochthon plants;
- conservation of diversity of plants and other botanical objects of scientific, education, economic, and cultural importance;
- scientific botanical researches;
- research of diversity of species of plants in the Moldovan territory and elaboration of scientific bases for its reasonable use;
- publication of scientific works, monographs, handbooks, magazines to popularize the science;
- creation of seed funds; organization of exchange of seeds and plants;
- elaboration of scientific bases of landscape architecture;

The law stipulates the possibility for botanical gardens to practice economic activities with the purpose to raise extra-budgetary financial means for maintenance and development. These activities comprise among others:

- production and sale of seeding material, seeds for flowers and trees;
- elaboration and implementation of dendrological, arrangement and green projects;
- organization and conduct of paid-for excursions in open and protected territory;
- conduct of joint economic activities with individuals or businesses inside or outside the Botanical Garden.

A Chisinau-based nongovernmental consumer protection organization has described a leasing contract between the Environment Ministry and a private firm as doubtful, saying that the Botanical Garden is destroyed through trade objects, massive manifestations improper to the statute of scientific institution, instead of being protected.

To avoid abuses of this kind, the new law restricts a number of activities in botanical gardens, including:

- unauthorized hunting, fishing and seizure of animals;
- construction of objects and depots, including temporary ones, for storage of chemical substances and mineral fertilizers;
- installation of heating networks, electricity transportation lines; technical water works;
- geological excavations;
- unauthorized cutting or clearing of trees, bushes, saplings, other plants;
- destruction or deterioration of brushwood or sapling-covered areas;
- unauthorized harvesting and collection of medical plants, flowers, fruits;
- traffic of transports except for roads of common use or special fields.

II. Law on Granting Facilities to Residents of Transdnistrian Region

Commentary by ADEPT: The Parliament adopted this law that exempts the electricity and natural gas supplies, telecommunication services, water and sewerage services provided by businesses based in Moldova but without any fiscal relations with its budgetary system from Value-Added Tax.

Also, the law compensates the difference of tariffs for electricity and natural gas used by residents of the village of Varnita in Anenii-Noi. The need of this law was due to the fact that the Varnita residents receive electricity and natural gas from enterprises on the left bank of the Dniester river, but do not benefit from compensations for these services.

III. Law on Amendment of the Code on Administrative Contraventions

Commentary by ADEPT: The law adopted by the Parliament calls for introduction of a "conventional unit" as administrative sanction instead of the minimum salary. Thus, the fine will be established in conventional units, while a conventional unit will be equivalent with 20 lei. At present, the 18-leu minimum salary as measurement unit is used to calculate rises, additions and supplements to payments for work, and it was introduced on June 1, 1994.

However, the notion of minimum salary represents the minimum size of the wage in lei, established by state for a simple, unqualified work, which the employer must respect it to pay for the work that the employee is doing a month or an hour.

The law on calculation of minimum salary was adopted in 2000 and it stipulated that the executive must present proposals on adjustment of the legislation in effect to this law within two months. The situation in this sector was not entirely changed after about five years, and many payments for budgetary workers are calculated on basis of the 18-leu minimum salary, which is no more an adequate economic category for quite a long time.

IV. Law on Granting Labor Inspection the Right to Administrative Sanctioning

Commentary by ADEPT: The law adopted by the Parliament provoked ardent debates during talks in the first reading, but most of opposition lawmakers and certain representatives of the parliamentary majority did not warm the empowerment of one more body with the right to administrative sanctioning.

Few new arguments in favor of this law were voiced in the second reading, while the main of them indicated findings of previous controls regarding violations of the labor protection legislation.

The law gathered the constitutional number of votes at the first try to adopt it, but an opposition lawmaker annulled later his positive vote under the pressure of his colleagues, and this action provoked controversial talks, but the Communist lawmakers ensured the presence of one more representative of their faction and approved the law with 52 votes.

V. Draft law on introduction of state allocations for persons who take care of blind invalids

Commentary by ADEPT: The draft law adopted in the first reading proposes the introduction of a 150-leu monthly indemnity for people capable of work who take care of 1st-degree blind invalids at home. The total cost of this draft is estimated at 5 million lei a year.

Activity of the Parliament on June 6-10, 2005

13 June 2005

The public opinion focussed on external political developments, especially on outcome of the recent meeting between presidents of Ukraine and Moldova, as well as on tour of Moldovan president to Brussels and Strasbourg. The Moldovan president sought the assistance of international organisations for settlement of the Transnistrian conflict, while meeting with European high ranking officials, addressing them a joint letter on behalf of Ukrainian and Moldovan authorities. As a result of meetings and agreements with Ukraine's president, the June 10 sitting of the Parliament focussed on Transnistrian settlement and recent evolutions in this area. Thus, representatives of parliamentary factions enjoyed possibility to comment on evolution of situation and unanimously adopted a declaration on Ukrainian initiative regarding the settlement of the Transnistrian conflict. On the other hand, parliamentarians voted two appeals on democratisation and demilitarisation of the Transnistrian region.

In the context of political events, lawmakers paid less attention to draft legislative documents on settlement, examining and adopting, however, several important drafts.

Also, lawmakers exchanged replies regarding the conduct of electoral campaign for early local elections in the Chisinau municipality, which resulted with an appeal demanding to describe speeches of a parliamentarian who bids for the Chisinau mayor post as electoral advertising. Taking into account the live broadcasting of plenary sittings by national radio and television channels, this problem seems to be interesting and the election legislation does not contain enough regulations and raises many questions.

I. Resolution of the Parliament on Ukrainian Plan on Settlement of the Transnistrian Conflict

Commentary by ADEPT: The Parliament adopted the following documents through its decision:

1. Declaration on Ukraine's initiative regarding the settlement of the Transnistrian conflict

The Parliament described the peaceful and democratic settlement of the Transnistrian conflict, restoration of Moldova's territorial integrity, and accomplishment of unity of people as a cogent priority of internal development of the country. Thus, the initiative of Ukraine's President Viktor Yushchenko to back Moldova's reintegration aspirations was saluted and Ukraine's offer was highly appreciated. Parliamentarians noted that Ukraine's proposal contains a new and efficient approach of the issue - settlement through democratisation.

However, lawmakers indicated the lack of some clear principles in Ukraine's proposal, especially regarding the withdrawal of Russian troops; demilitarisation and democratisation of the breakaway region; introduction of a transparent and legal control on the Transnistrian segment of the Moldovan-Ukrainian state border.

The Parliament found that some aspects of the plan may harm Moldova's sovereignty, including the idea of participation of the Transnistrian region in promotion of Moldova's foreign policy, creation of a so-called conciliation committee.

2. Appeal on criteria of democratisation of the Transnistrian region

This appeal is based on principles of the March 24, 2005 Declaration of Moldova's Parliament on political partnership for accomplishment of European integration principles.

The appeal describes the existence of a separatist and authoritarian regime in the Transnistrian region of Moldova as intolerable in a modern Europe, the "frozen conflict" is a hotbed of regional instability, while the lack of a control of central bodies of state administration of Moldova on a part of its territory and on a segment of the state border is incompatible with the European option of the country. Also, it notes that organisation of free and democratic elections in the Transnistrian region is impossible without respect for norms of Moldova's Constitutions and international democratic standards, in absence of political pluralism and freedom of expression, repression of any manifestation of attitude which is different of the one imposed by force.

The Parliament established that to uproot the abuses mentioned above a wide and complex process of democratisation of the region, with a control of the international community is needed, and it would include the following measures:

- abolition of the State Security Ministry, political police which suppress any manifestation of freedom and eliminate the political opponents of the acting separatist regime;
- reformation of the so-called judiciary power in the Transnistrian region;
- release of political prisoners who are illegally detained in prisons in the Transnistrian region;
- elimination of obstacles on way of free activity of Moldova's political parties in the Transnistrian region;
- elimination of obstacles on way of free activity of national and local mass media institutions in the Transnistrian region;
- elimination of obstacles on way of free activity of nongovernmental organisations and development of civil society in the region;
- conduct of elections in Moldova's Transnistrian region under the exclusive aegis of an International Election Commission under the OSCE mandate, with a wide representation of member countries, without resulting with recognition of this entity;
- exertion of the right to participate in electoral process in the region only on basis of confirmation of Moldovan citizenship.

The guaranteeing of rights of Moldovan citizens from this region to free expression of will is impossible without an insurance beforehand of these conditions, as well as the creation of representative bodies in the Transnistrian region is impossible.

3. Appeal on principles and conditions for demilitarisation of the Transnistrian region

The document describes the military factor of the Transnistrian problem as a defiance of national and regional security, requiring an immediate solution, with the Parliament seeking the assistance of the OSCE, the European Union, Council of Europe, the United States, the Russian Federation, and Romania to eliminate the threats of the military factor of the Transnistrian conflict on way of demilitarisation of the region.

The Parliament of Moldova established a series of conditions needed for demilitarisation of the Transnistrian region, on basis of Article 11 of Moldova's Constitution, which prohibits the deployment of armed forces of other states in territory of Moldova as neutral state. They include among others:

- a. The Russian Federation will complete the withdrawal and destruction of Russian military arsenal by late 2005, as well as the pullout of Russian military forces from Moldova's territory.
- b. The Russian Federation and the Republic of Moldova will recognise that the military units deployed in the security zone of Moldova in line with the July 21, 1992 Moldovan-Russian Agreement had fulfilled their goals, and will be gradually reduced and entirely withdrawn from country's territory by December 31, 2006.
- c. The Republic of Moldova assumes the obligation to propose and accomplish the dissolution of military units in the region, destruction of weapons and military hardware, and social recovery and requalification of personnel of the so-called Transnistrian military units, within the NATO's Partnership for Peace Programme.
- d. Once the Russian Federation fulfills the obligations assumed at the 1999 OSCE Istanbul summit regarding the complete and transparent withdrawal of army and weapons from Moldova's territory, the Parliament of Moldova expresses readiness to ratify the Adapted Conventional Forces in Europe Treaty, which is a key element of European security.

II. Law on Ecological Agriculture

Commentary by ADEPT: The law that the Parliament passed in the final reading regulates the social ties needed to obtain vegetal and animal products, through ecological agriculture and without synthesis chemical substances.

The law explains a number of notions, including:

- ecological agriculture - agriculture based on respect for principles which ensure the creation of a balanced and sustained agri-ecosystem, without use of polluting (synthesis) chemical substances;

- ecological production - agri-food products obtained, maintained and processed without synthesis chemical substances;
- genetically modified organisms - organisms obtained through techniques of artificial modification of genetic material through reproduction/recombination;
- national conformity brand of ecological agriculture - written, printed or graphic sign included in label of ecological agri-food products.

The basic principles of ecological agriculture comprise:

- achievement of sustained, diversified and balanced agricultural systems, which protect natural resources, health and life of consumers;
- integrated approach of policy and actions at national and local levels;
- rejection of any polluting technologies and restrictive regulation of use of polluting chemicals;
- implementation of modern technologies for plants, animal breeding;
- continued maintenance and improvement of natural fertility of soil;
- voluntary start and stoppage of entrepreneurial activity in this sector.

The law regulates the tasks of competent authority in ecological agriculture sector, ecological production rules, product label rules, competences of businesses working in this sector, evaluation of production conformity, importation and exportation of this production, insurance in ecological production sector.

Developers of this law consider that promotion of its principles and ecological products will increase the volume of exported production and will strengthen the reputation of domestic products on national and international markets.

III. Draft law on prevention and struggle against trafficking in human beings

Commentary by ADEPT: The draft that the Parliament passed in the first reading aims to create a legislative framework on prevention and struggle against trafficking in human beings, insurance of protection of rights and interests of victims of trafficking. The law will regulate the following:

- prevention and fight against trafficking in human beings;
- protection and assistance for victims of trafficking in human beings, with complete respect for their rights;
- cooperation between public administration authorities, public associations, and other representatives of civil society for prevention and fight against trafficking in human beings;
- cooperation with other states and competent international and regional organisations in this sector.

The draft law explains some key notions related to this sector, including:

- trafficking in human beings - recruitment, transportation, transfer, sheltering or receiving of a person by force, through kidnapping, cheating, misuse of power or situation of vulnerability, through other means of compulsion, as well as by giving or receiving money or benefits of any other nature, in order to obtain the agreement of a person who controls another person for exploitation purposes;
- trafficking in children - recruitment, transportation, transfer, sheltering or receiving of a child for exploitation purposes, though none of the means mentioned above are used for these actions;
- exploitation of a person - abuse of a person in order to obtain profit and namely:
 - obligation of a person to do a work or grant some services through force, threats or other illegal compulsion means;
 - taking a person in slavery;
 - obligation to practice prostitution, participation in porno representations in order to produce, release and sell them;
 - obligation to drawing of organs, tissues or other elements of human body for transplant;
 - use of a woman as substitute mother or for reproduction purpose;
 - abuse of a child for illegal adoption purpose;
 - use in armed conflicts or illegal military units;
 - use for criminal activities;
 - obligation to practice beggary;
 - sale of a person to another person, etc.

Following actions are proposed to be included among key principles of the struggle against trafficking in human beings: respect for human rights and fundamental freedoms; recognition of trafficking in human beings as a violation of fundamental human rights, dignity, freedom and integrity of human rights; insurance of safety and fair attitude towards victims of trafficking in human beings; complex use of juridical, political, social-economic, and information measures; social partnership, cooperation between public administration authorities, international, nongovernmental organisations; proportionality between respect for fundamental rights of victims and penal investigation conditions; equal approach of all forms and types of national or transnational trafficking related or not to organised crime, etc.

The draft indicates the competent authorities in charge with prevention and struggle against trafficking in human beings, their tasks, measures of protection and assistance of victims of trafficking in human beings, responsibility for entities for trafficking in human beings, international cooperation in this area, etc.

Activity of the Parliament on June 20-30, 2005

5 July 2005

The appointment of judges of the Supreme Court of Justice was one of topics that the Parliament ardently discussed in the period concerned. The parliamentary majority appointed six judges of the Supreme Court of Justice and rejected another four candidates without indicating any reasons, after a number of speeches which demanded to postpone the examination of this issue. The opposition criticized this procedure of groundless rejection of candidates, fearing that the independence of judges is influenced and the system is politicized this way. These opinions became strongly argued when the parliamentary majority turned down a proposal of the Superior Council of Magistrates to name the acting deputy chairmen of the Supreme Court of Justice, Constantin Gurschi and Vasile Pascaru, to continue running these offices, with the opposition describing this gesture as a political trick.

To mention that recent debates envisaged the candidacy of the court chairman, whom the parliamentary majority named however, after a number of speeches regarding this candidacy and the entire judiciary system of the country that the opposition vehemently criticized. In particular, opposition representatives insisted that the examination of such problems be postponed until examination of packages of laws aimed to reform the judiciary system, as the same persons docile to the power who fulfil its wishes later are named because of the lack of these amendments.

Another draft that parliamentarians discussed in details envisaged the gender equality, but debates had a tolerant and constructive nature this time.

Legislators also examined several draft international documents, as well as a number of amendments to the national legislation.

I. Law on Ratification of Protocol 14 of the European Convention on Human Rights

Commentary by ADEPT: The Committee of Ministers of the Council of Europe ratified this protocol in 2004 in a move to improve the control system established in the European Court of Human Rights (ECHR) and to offer ECHR a series of new means needed for a more operative examination of appeals.

Also, the protocol awards supplementary rights on adoption of ECHR decisions and namely concerning:

- consolidation of the ECHR capacity of filtration in order to eliminate groundless cases;
- introduction of new admission criteria for minor cases;
- introduction of a shorter procedure for minor cases.

The modifications introduced by this protocol call for a higher number of ECHR judges.

Also, the status of judges is modified, so that they are elected for one mandate for a 9-year term.

It is worth to mention that a new amendment is introduced to authorise the ECHR to declare any appeal which unfits the European Convention on Human Rights as inadmissible, or if the applicant did not suffer any important damage.

The protocol allows the European Union, as judiciary institution, to join the European Convention on Human Rights.

II. Law on Modification of the Education Law

Commentary by ADEPT: The Parliament prolonged the deadline for attestation of institutions of higher learning with one year through this law, in line with new rigours established by education legislation. In particular, the legislation obliges private educational institutions to hold a minimum statutory capital in the amount of:

- one million lei - for institutions of higher learning and vocational institutions;
- 500,000 lei - for secondary educational institutions;
- 300,000 lei - for elementary educational institutions, pre-school institutions, and other educational facilities.

Also, the law obliges all private educational institutions to own headquarters and necessary technical-material base for teaching process.

Earlier, many heads of private educational institutions had protested against introduction of these restrictions, as well as the very short deadline to bring the material base in compliance with these requirements. Parliamentarians have partly complied with these demands, prolonging only the deadline for introduction of restrictions, but did not reduce their size.

III. Law on Amendment of the Penal Code

Commentary by ADEPT: A new article - 309 - called "Torture" was introduced in the Penal Code through this law. Under the law, a 2-5-year jail term is in effect for the deliberate provocation of a pain or serious physical or psychic suffering to a person, especially with the purpose to obtain information and testimonies, to punish him/her or a third person for an action that he/she committed or he/she is suspected of having committed, to intimidate or to pressure a third person, or for any other reason based on discrimination, when a high ranking functionary or any other official provokes such a pain or suffering, except for pains and sufferings resulting from legal sanctions.

This article also contains a number of aggravating cases such as torture:

- on a pregnant woman;
- on a minor;
- applied by two or more persons;

- seizing the helplessness condition of victim;
- applied by a high ranking official, etc.

A 5-10 detention term is in effect for such cases.

Many nongovernmental organisations specialised in protection of human rights had earlier signalled the need to introduce amendments to the Penal Code in a move to charge the torture and inhuman or degrading treatments which are frequently applied in the internal law system of Moldova.

IV. Draft law on modification and completion of the Code on Administrative Contraventions

Commentary by ADEPT: The draft law adopted in the first lecture aims to modify the existing orders or summoning of a person as offender. Orders similar to provisions of the Code on Penal and Civil Procedure are introduced indeed in the Code on Administrative Contraventions, regulating in details the following:

- summoning place (at home or residence; in dependence of the temporary location of offender; an address indicated by offender, in hospitals, in detention facility; at military units, etc.);
- text of summon (name and headquarter of the summoning body; date and issuing number; identity data of the summoned person; month, date, place and time of summoning; reception evidence, etc.);
- summoning mode (handing in of summon; handing in of summon to a relative or a person who lives together with the summoned person; summoning through post service; online summoning; summoning via mass media, etc.).

V. Draft law on insurance of equal chances to women and men

Commentary by ADEPT: Being a key topic of different meetings, the problem of equal chances became official through adoption of this draft law in the first reading, aimed to regulate the field.

The key elements of this draft include among others:

- prohibition of employment discrimination and contests for employment of only one gender;
- insurance of representation of genders in administration of parties;
- insurance of a 30 percent minimum representation of each of genders in lists of electoral competitors;
- establishing of a series of discriminatory measures that employers are prohibited to apply;

- establishing of detailed competences of central and local public authorities in charge with insurance of equal chances;
- establishing of compensations for damage caused through gender discrimination, etc.